When that is so, the reference has to be accepted and it must be held that the II party was not justified in suspending the workman for seven days without pay and allowance. The workman is entitled to pay and allowance for this period of seven days.

10. In the result, the Reference is accepted. It is held that the management of Karnataka State Road Transport Corporation, Hassan Division was not justified in suspending Sri Jaffer Sheriff, Driver without pay and allowance for seven days or for any other period as a measure of punishment. Jaffer Sheriff is entitled to get his pay and allowance for this period of 7 days. In the circumstances of this case, I direct the parties to bear their own costs.

Dictated to the stenographer, transcribed by him and after correction, pronounced by me in open Court on this 20th day of December, 1977.

M. S. VASUDEVA RAO,
Presiding Officer, Labour Court, Hassan.

List of Exhibits for management :-

I.D C. 19/76.

ExM-1	Copy of the offence Memo	W.W 2 11-8-77
ExM-2	Explanation submitted by the worker	W.W. 2 ,,
ExM-3	Show cause notice Dated 3/18-3-72	W W 2 ,,
ExM-4	Charge sheet copy	W.W. 2 ,,
ExM-5	Proceding of the enquiry officer	W.W. 2 ,,
ExM-6	Findings of the Enquiry Officer	M W 1 6-12-77

M. S. VASUDEVA RAO,
Presiding Officer, Labour Court, Hassan.

ORDER No. SWL 9 LLA 78. BANGALORE, DATED 27TH JANUARY 1978.

Whereas by State Government Order No. SWL 79 LLD 75 dated 10th June 1975 read with Government Order No. SWL 120 (iii) LLE 76 dated 3rd August 1976 the Industrial dispute between the workman and the management of Karnataka State Road Transport Corporation, Hassan Division, Hassan was referred to the Labour Court, Hassan for adjudication;

And Whereas the Presiding Officer, Labour Court, Hassan has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, Therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act 1947 (Central Act 14 of 1947) the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette*.

By Order and in the name of the President of India,

M. HONNAGANGE GOWDA
Under Secretary to Government,
Social Welfare and Labour Department.

2412—S.O. 614

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute.— Industrial dispute between the workmen and the management of Karnataka State Road Transport Corporation, K.H. Road, Bangalore.

Award of the Presiding Officer, Labour Court, Hubli published.

Read the following papers.—

(1) Letter No. LCH/1821/7 78 dated 2nd January 1978 from Shri P. L. Kumaraswamy, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT AT HUBLI

Ref No 234/77

Present: Sri P.L. Kumaraswamy, B SC., B L,

Presiding Officer.

Date 19th December 1977

Claimant. Sri L. R Patil, C/o The President, Belgaum Mazdoor Sabha 16 8 3 Ramling Khan, Belgaum.

(By Sri Ram Mahapte Advocate)

Respondent. The General Manager, K.S.R.T.C., K. H. Road, Bangalore.

(By Sri S. M Hanasi Advocate, Hubli)

G.O. No. cWL 880 LLD 74 DATED 19TH NOVEMBER 1974.

JUDGEMENT AND AWARD

1. This case which was originally pending on the file of the Labour Court Bangalore where the parties had filed their pleadings has now been transferred to this Court The point for adjudication in this case is whether the Respondent is justified in terminating the services of the claimant w.e.f 16th December 1971 and whether he is entitled to any reliefs.

2 The claimant has contended that since February 1970 he was working in Kolar Division of the Respondent Corporation and he sought for transfer from that division to some place either in Belgaum Hubli or Bijapur Division and his request of transfer was not complied with. He complains that during his service in Kolar he was harassed by his co-workers by allowing his cycle tube to be punctured and not giving him required co-operation and also assaulted by his co-workers and therefore he applied for leave and came away. He claims that he has been issued a notice calling for explanation for unauthorised absence to which he has sent a reply and ultimately he has been terminated which according to the claimant is unjustified and illegal. He contends that the order of termination is made by way of punishment for alleged misconduct and that no chargesheet

has been issued and no enquiry has been held. He also contends that the authority has not taken into consideration his representation and no personal opportunity had been given to him to report for duty. He, therefore, prays that he should be reinstated with back wages and continuity of service.

3. The Respondent contends that the claimant who was working in KSRTC, Kolar division had sought for transfer in March 1970 on the ground that the climate in the Mysore site did not suit him. He contends that the claimant had not completed the period of probation. Therefore his request could not be complied with as a matter of right and because his stay in Kolar was undesirable during the period of probation. They also contend that the claimant did not evince interest to qualify himself during the period of probation and was not inclined to carry out work entrusted to him and has absented himself from duty. They contend that the claimant has not given satisfactory explanation for his unauthorised absence. They further contend that since the claimant did not prove himself to be fit and suitable during the period of probation, his services were not regularised or confirmed and therefore he has no right or status to maintain this case and hence he is not entitled for reinstatement or other benefits claimed. They denied the plea of ill treatment on the ground that he was a Mysorean. They contended that his services were terminated because he had not completed the period of probation satisfactorily.

4. From the several documents exhibited by consent by both parties and the evidence of the claimant and one Junior Assistant of the Respondent many of the facts are undisputed and these facts are narrated below.

The claimant was appointed as per Ex. M-1 along with one R. R. Kattimani, both the persons appointed under this order are persons coming from Belgaum District. They are appointed to a common Kolar division. The allegation in the written statement of the Respondent that the claimant was registered in the Hubli office and since there was no possibility of his getting appointment in Hubli division and when the Kolar Division was wanted, the consent of the claimant was obtained and therefore he was appointed to that division, is not seriously disputed. The order shows that his appointment will be on probation for 2 years. The date is 2-4-1970. This also stipulates that if he is unsuitable for job during the period of probation and if he does not improve inspite of being cautioned he could be discharged with notice. The claimant has worked in Kolar division for a little period of one year after his appointment. Thereafter he has been giving representations like Ex W-1, W-10 M4, M-5 and M-2 seeking for transfer on several grounds mentioned therein. He was not given a favourable enquiry of this request. But he has been informed by several communications issued that the transfer is not possible at present. There was an incident on 5-8-1971 wherein one Kattimani R. K. appears to have thrown a opened paint box on the cla-

mant in the presence of Divisional Works Superintendent. Therefore the claimant applied for leave from 6-5-1971 and up to 12-5-1971 and left that place and came over to Belgaum. Thereafter he has never turned up at all. After he proceeded on leave he got a notice issued through an Advocate Ex. M-1 to which a reply as per Ex W-3 has been issued In regard to the misconduct committed by Kati an enquiry was ordered as per Ex. M-2 and the enquiry Officer was appointed. Ex M-3 is chargesheet issued to the said R R Katti. This R. R. Katti gave his explanation Ex. M 13 and tendered resignation to post. The appointment of the enquiry Officer and issue of chargesheet and furnishing of explanation has been done on 5-5 1971 which is the day of occurrence. The claimant was issued a show cause notice Ex-W-2 Ex W 4 is duplication which was issued by inadvertant with Respondent. The claimant has given explanation to Ex. W-2 wherein he has contended that the stand he has taken in Ex. W-6 holds good Ex. W 5 which is a copy of Ex. M-8 is the reply to Ex W-4. Thereafter the Respondent issued Ex. W-6 giving him a one more chance to report for duty within 7 days from the date of receipt Admittedly the claimant did not report to duty. Thereafter the Management passed an order Ex W-7 terminating his services. The claimant preferred an appeal as per Ex. M-10. This appeal appears to have not disposed within 6 months. Hence after the claimant got a notice issued to the General Manager claiming for damages. This notice is Ex W-11 Thereafter the suit had also been filed before the Munsiff Belgaum as per plaint Ex W-8 claiming damages. Any way there is no material on record to show that the claimant got a decree at the hands of the Munsiff The General Manager has decided the appeal as per Ex. W-9 and has refused to interfere with the order passed by the Divisional Controller Thereafter a notice as per Ex. W-10 has been issued and thereafter the matter has now before the Court as the request made in Ex. M-11 was not considered by the Respondent.

5. In this case except calling for explanation no enquiry has been held as contemplated under rules. The contention of the claimant is that the representation given by the claimant has not been taken into consideration as no force at all. The notice was issued to call upon him to explain for his unauthorised absence. It must be remembered that his absence was during the period of probation because by the time he went on leave viz 5-5-1971 the period of probation has not been completed as could be seen from the documents marked. The Management has done The Management has done its best by issuing a notice to R R. Katti who had assaulted the claimant on the very day of the occurance and the said Katti has tendered resignation on the very day itself The explanation given by Katti shows that he has made some allegations against the claimant also. Any way that enquiry was not proceeded with because his resignation was accepted. In such circumstances, it

is fu la to contend th t the Management did not provided suitable opportunity to claimeh to continue in service. As I gather from records exhibitted in this case, the claimant appears to have invented this cause as a refuse for be unauthorised absences. Except through the notices sent through his Advocate he had not sought for the leave subsequent to 13 5-1971 H has not made it clear t the Court that he had leave to his credit. He has not even told the Court the leave was sanctioned to him atleast upto 13-5-1971. The request in the legal notice not issued on 7-5 1971 is to force the Management to give him a transfer and also to force the Management to grant him leave with pay or half pay or without pay till such time his transfer is effected. The Respondent has contended that the post held by the claimant is a divisional post which can not be transferred. The claimant has not shown any rule which shows that the incumbent of this post could be transferre under any rule and that to during the probation. He has not pointed any rule that he will get him right to get the leave sanctioned for indefinite period with or without allowance. If the request claimed by the claimant is to be considered it would mean that for indefinite period the Management has to keep quite a dd to go on sanctioning leave even without allowance and thereby hampering the work which the claimant was required to do. When there is no right given to him of getting the leave sanctioned and when there is no rule that he should be transferred as of right, his claim is unreasonable. I feel that the petitent relating to them assault by Kittu is only made use of to force the Management to give him transfer

6. It is not correct to contend that no reasonable opportunity has been given to the claimant to report for duty. As already indicate earlier he has been specifically directed to report for duty within 2 weeks of the receipt of Ex W-6. Admittedly he has not reported for himself for duty within the period mentioned in Ex. W-6 Hence an opportunity had been given to him to report for duty and the claiment has not availed of this opportunity.

7. The learned representative for the claimant contends that if it is a discharge simpliciter, he has no case because the Management can effect a discharge during the period of probation. His argument is that in effect it is a termination for alleged misconduct and it casts stigma on him and therefore he contends that since the enquiry is not held, the termination order must be set aside. It is fairly conceded that no enquiry has been held except calling for an explanation. The learned counsel for the Respondent submitted that in view of the explanation most of the facts were appeared on the face of the records and therefore there is no need to hold an enquiry. Even the submission of the Respondent's counsel is correct because most of the facts were known to both the parties.

8. I feel that there is no merit in the contention that this discharge is given by way of punishment for a alleged misconduct.

Ex W-7 no doubt has got two portions one relating to misconduct for unauthorised absence and the other for its conclusion that the claimant is not willing to continue in service. When the claimant has not taken advantage of the offer made in Ex. W-6, the only inference to be drawn is that he has decided to continue in service. The earlier portion of Ex. W-7 no doubt states that he claimant has committed misconduct under Rule VII 8 (a) read with XI (1) of MSRTC standing orders. If only the latter portion of Ex. W 7 was there, the argument of the learned representative of the claimant could have been accepted. But I find in the latter portion that they have come to the conclusion that the claimant has no desire to continue in service because he has not given satisfactory explanation. I can not agree with the representative of the claimant that the correspondence exchanged between the parties clearly show the reasons for absenting and which was according to him for reasons beyond his control. I can not agree with this contention at all. When the Management has taken steps against the person who committed assault on the claimant, the claimant should have reported himself for duty. If the Management had not taken action he should have taken protection from the Police and even after words if his plea was found miserable, then perhaps there would have some justification for staying in Belgaum. He can not assume that the conditions were not favourable to him. As already pointed his assistant has tendered resignation. Therefore any obstacle he had, had already been removed. In such circumstances when he absented from duty it can not be said that it is for reasons beyond his control and that the explanation given by him as to be accepted.

9. The unauthorised absence is during the period of probation. The appointment order Ex M-1 gives a right to the Management to terminate his services if he does not improve inspite of being cautioned in Ex. W-5 he has been cautioned but there has been no improvement since he did not turn up for duty. Therefore the very service condition Ex. M-1 clearly gives authority to the Management to terminate the services of the claimant without notice. Therefore the termination of the claimant would be justifiable. He can not now contend that his order is unjustifiable. He cannot rely of the order of the Appellate authority as per Ex. W-9, that some words have been used or not probably by inadvertance. Even this order has two portions. One relating to his unauthorised absence amounts relating to the claimant not availing opportunity given him to report and to show good progress. Therefore the portion that relates to unauthorised absence could be ignored. But the other portion will certainly prevail. That show that the order made by the Respondent is only by way of discharge and not by way of punishment.

10. This position has also been made clear in a decision of our High Court in W P. No. 4835 and 4855 of 1970 where a similar question has been involved and where His Lordship has held that the

termination does not amount to termination by why of punishment. Applying the ratio in that case I feel that the claimant has no case to contend that his termination is bad in law.

11. Therefore My finding on the 1st point of dispute refferred to me is that the Management is justified in terminating the services of the claimant.

12. In view of this finding, the claimant is not entitled to any relief claimed by him. No costs.

(Dictated to the Stenographer, transcribed and typed by him and corrected by me).

Dandeli camp,
19-12-1977

P. L. KUMARASWAMY,
Presiding Officer, Labour Court, Hubli.

List of witnesses examined on behalf of Claimant.

1) WW-1 claimant,

List of documents marked on his behalf.

1) Ex. W-1 Application of the claimant for transfer.
2) Ex. W-2 Show cause notice to claimant.
3) Ex. W-3 Reply to the claimant's advocate.
4) Ex. W-4 Show cause notice.
5) Ex. W-5 Application of olaimants.
6) Ex. W-6 Letter of Respondent to claimant.
7) Ex. W-7 Order of termination.
8) Ex. W-8 Copy of Plaint filed before Munsiff Court.
9) Ex. W-9 Order of Appellate authority.
10) Ex. Application of claimant.

List of witness examined on behalf of Respondent.

1) Ex. MW-1 Junior Assistant.

List of documents marked on behalf of Respondent.

1) Ex. M-1 Appointment Order.
2) Ex. M-2 Appointment of enquiry Officer order.
3) Ex. M-3 Charge sheet,
4) Ex. M-4 Application of claimant to Respondent.
5) Ex. M-5 Request Transfer order.
6) Ex. M-6 Notice sent by claimant to Respondent.
7) Ex. M-7 Application by the claimant to Respondent.
8) Ex. M-8 Reply to show cause notice.
9) Ex. M-9 Appllcation of claimant to Respondent.
10) Ex. M-10 Appeal Memo.
11) Ex. M-11 Lawyers notice issued to Respondent.
12) Ex. M-12 Application of claimant to Respondent.
13) Ex. M-13 Explanation submitted by Katti,

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Presiding Officer, Labour Court, Hubli.